

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs, September 21, 2009

JOYCE A. KENDALL v. RONALD W. MEYER.

**Direct Appeal from the Circuit Court for Hamilton County
No. 06-D-677 Hon. Jacqueline S. Bolton, Judge**

No. E2008-02756-COA-R3-CV - FILED OCTOBER 5, 2009

In this divorce case, following trial the Trial Court granted the parties a divorce and enforced an Antenuptial Agreement, designated the appellee as the primary residential parent for the parties' minor children, and ordered the husband to pay child support in accordance with the Child Support Guidelines. On appeal, we affirm the Judgment of the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Ronald Meyer, McDonald, Tennessee, *pro se*.

Daniel K. Habenicht, Chattanooga, Tennessee, for appellee.

OPINION

Background

This divorce action was filed on March 30, 2006, and an Answer and Counter-Complaint was filed and the case went to trial on September 16, 17 and 23, 2008.

The Trial Court entered a Final Decree of Divorce on November 10, 2008, wherein the parties were granted a divorce, the plaintiff wife was designated the primary residential parent for the parties minor children, and the defendant was awarded parenting time with the children.

The Court held the father to be underemployed and imputed income to the defendant in accordance with the Tennessee Child Support Guidelines and defendant was then ordered to pay child support in accordance with the guidelines.

The Court also found that the Antenuptial Agreement entered into between the parties was valid, and divided the marital estate, and ordered child support and medical expense arrearage against the husband.

Defendant filed a Notice of Appeal and the defendant has filed briefs *pro se*, which we note are not in compliance with the Rules of Appellate Procedure in several areas. His briefs are scurrilous and filled with invective. By attempting to discern the issues he has raised and responding to them, we do not thereby excuse or condone the appellant's offensive conduct, and his denigrating the other party and her attorneys. We strongly condemn his conduct.

No transcript of evidence has been filed in this Court and the issues of fact as found by the Trial Judge are conclusively presumed to be correct under the familiar rule.

From what we can discern from the appellant's brief, he argues that the Antenuptial Agreement should not be enforced and the Trial Court did not equitably divide the marital assets and liabilities of the parties. Also, he faults the Trial Court for naming the appellee the primary residential parent for the parties' minor children.

Appellee raises an issue that attorney's fees should be awarded because appellant's appeal is frivolous.

The Trial Court in her Memorandum Opinion in ruling on the Antenuptial Agreement said:

The severability of a contract is a question of law and depends upon the intent of the parties. T.C.A. § 36-3-501 recognizes that the main purpose of an antenuptial agreement is to "control the disposition of property upon divorce." The present case is no different; Section Nine of the Agreement makes clear that the purpose of the contract was to control the disposition of property upon divorce. Clearly the intent of the parties to the Agreement was to set aside and protect certain properties as separate rather than marital assets, and to waive the claims and rights which would exist but for the Antenuptial Agreement.

The offending clause's purpose was to facilitate divorce proceedings should they become necessary. The clause is sufficiently collateral and independent of the Agreement's primary intent to control the disposition of property. Therefore, the offending clause can be severed from the main document without either party obtaining an undue advantage.

Section Nine of the Antenuptial Agreement provides:

Each of the parties hereto recognize the possibility of the termination of the contemplated marriage by means other than the death of one of the parties. The intent of this agreement is to make clear that regardless of any fault of either of the parties, neither shall make any claim against any of the separate property listed herein of the other whether now owned or hereafter acquired, all of which is hereby expressly waived. With the exception of rights set out in Section Three above, in the event of a divorce, the parties will split equally any other property acquired jointly after the marriage. If dissolution of the marriage shall become necessary, each shall pay his or her own attorney fee. The parties agree that since this is an agreement as to the division of property, in the event of divorce, they will be divorced on a “no-fault” basis with each party signing an agreement in conformity with this agreement.

We agree with the Trial Court, that the intent of the parties to the agreement was to set aside and protect certain property as separate, rather than marital assets, and deny the claims and rights which would exist without the antenuptial agreement.

On the record before us, the Trial Court enforced the antenuptial agreement and awarded assets pursuant thereto, which we affirm.

On the issue of the disposition of marital assets and liabilities to the parties, the Trial Court in making an equitable division of marital property, must consider the factors set out in Tenn. Code Ann. § 36-4-121, and accordingly, the findings of fact by the Trial Court are presumed correct, as we must, as no transcript of the evidence has been filed. There is nothing in the record to demonstrate that the division of marital assets and liabilities was inequitable. Accordingly, we affirm the Trial Judge’s division of marital assets.

The Trial Court designated appellee as the primary residential parent for the parties’ minor children, and the Court provided that the father was awarded residential parenting time in the Decree as follows:

- a. Beginning Saturday, September 27, 2008, and continuing each week until October 31, 2008, one day each weekend from 11:00 a.m. until 3:00 p.m.
- b. From November 1, 2008, until November 30, 2008, one day each weekend from 10:00 a.m. until 5:00 p.m.
- c. From December 1, 2008 until December 31, 2008, one day each weekend from 10:00 a.m. until 7:00 p.m.
- d. From January 1, 2009 until March 31, 2009, each weekend from Saturday at 10:00 a.m.. Until Sunday at 12:00 p.m.

Additionally, the appellant was awarded residential parenting time on Thanksgiving Eve from 5:00 p.m. to 8:00 p.m., and Christmas Eve from 5:00 p.m. to 8:00 p.m., with other details as to the holiday listing schedule.

The Trial Court has broad discretion in custody issues, which is measured against what is in the best interest of the children. From this record, we find no abuse of discretion in the Trial Court's custodial and visitation arrangements.

Finally, the record before us supports the Trial Court's finding as to child support, as set by imputed income pursuant to the State Child Support Guidelines.

In sum, the Trial Court entered a detailed and thorough Memorandum Opinion and findings as required on the issues in this divorce, and we affirm the Judgment of the Trial Court, with the cost of the appeal assessed to the appellant, Ronald W. Meyer. However, in our discretion, we do not award attorney's fees as requested by the appellee, Joyce A. Kendall.

HERSCHEL PICKENS FRANKS, P.J.